

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MIDFIRST BANK,

Petitioner,

v.

SAFEGUARD PROPERTIES, LLC,

Respondent.

Case No. 5:17-cv-00231-D

**MOTION FOR HEARING ON
PLAINTIFF'S PETITION TO COMPEL ARBITRATION**

On March 2, 2017, MidFirst Bank ("MidFirst") filed a petition to compel Safeguard Properties, LLC ("Safeguard") to arbitrate claims that MidFirst has asserted against Safeguard, in accordance with the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 4 and 5, and a Master Service Agreement (the "Agreement") between the parties. Specifically, MidFirst asked the Court to compel Safeguard to arbitrate claims that (1) Safeguard breached its indemnification obligation under the Agreement and is liable to MidFirst for damages, and (2) MidFirst is entitled to set off the amount of unpaid Safeguard invoices against the amount owed by Safeguard as indemnification.

As confirmed by Safeguard's March 27, 2017 opposition filing, Safeguard refuses to arbitrate MidFirst's claims. Safeguard contends it is not bound by the parties' agreement to arbitrate in the Western District of Oklahoma because the requirement to do so is unconscionable, and it further contends that MidFirst's set-off remedy is not encompassed by the broad arbitration language in the Agreement. Pursuant to LCvR7.1(i), MidFirst intends to file a reply in support of the Petition by March 31, 2017.

An expeditious ruling on the arbitrability of MidFirst's claims would benefit the parties for several reasons. Most importantly, it will confirm the path forward so that arbitration can commence and the parties may proceed toward resolving their dispute.

A further reason for prompt resolution of the arbitrability question is that it will provide clarity with regard to a retaliatory lawsuit that Safeguard initiated against MidFirst in the Northern District of Ohio on March 17, 2017—two weeks after MidFirst filed its Petition. Safeguard's countersuit (*see* Exhibit 1, Safeguard Opp.), effectively seeks to litigate in its home forum MidFirst's right to offset its damages by the amount of Safeguard's invoices. A ruling on the arbitrability of MidFirst's claims—a determination properly made by this Court—will clarify whether Safeguard's Ohio suit may even proceed.

For the foregoing reasons, MidFirst respectfully requests that the Court set a hearing on the Petition for Tuesday, April 4, 2017, or the Court's first available date thereafter, *see* 9 U.S.C. § 4 (requiring "[f]ive days' notice in writing" before a district court hears the parties and issues an order directing them to proceed to arbitration).

March 28, 2017

Respectfully submitted,

/s/ Kiran A. Phansalkar

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CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2017, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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